THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11151 OF 2005

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Dated : 13th September, 2005

Between:

M/s. Bharava Engineering and Electrical Works,

V.S.N.Reddy Complex, Sagar Road,

Miriyalaguda, Nalgonda District.

Reptd. By B. Kishan.

.. Petitioner

And

The Executive Engineer,

RWS (Proj) Divn., Khammam. … Respondent

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ORDER :

This writ petition is filed seeking a declaration that the action of the respondent in terminating the agreements in favour of the petitioner, under the impugned proceedings dated 28-3-2005 as arbitrary and illegal.

The petitioner Company participated in the tenders invited by the respondent for execution of work of Operation and Maintenance of the pumpsets, motors, panel boards allied both electrical and mechanical installations of Comprehensive Protected Water Supply Schemes of Adavimallela and Gummadavalli packages and having been declared as successful bidder was awarded the said two contracts. The said works have been carried out the under Comprehensive Protected Water Supply Schemes which were conceived for the purpose of providing drinking water to the flouride affected villages. The petitioner submitted its bid by quoting 11.87% and 9.13% less than the estimated rates which were the lowest and accordingly the two contracts were awarded. In pursuance thereof, two agreements were entered into on 8-12-2004 and 13-12-2004 in respect of the two packages respectively. It is not in dispute that the period of contract under the agreements is from the date of agreement to 30-09-2005. As per the conditions of agreement, the petitioner was required to deposit a sum of Rs.18,600/- and Rs.21,600/- towards Earnest Money Deposit (E.M.D.) by 25th March, 2005. The petitioner states that in compliance with the said condition, they have purchased the demand drafts on 13-4-2005 and submitted the same to the respondent on the same day. However, by orders dated 28-03-2005 issued by the respondent, the petitioner was informed that since they failed to remit the earnest money deposit within the stipulated date i.e, by 25-03-2005, the agreements executed in its favour in respect of the two packages are terminated by 31-03-2005. The said orders dispatched under certificate of posting were received by the petitioner on 2-5-2005. Aggrieved by the same, the present writ petition has been filed contending that since the demand drafts furnished by the petitioner have already been accepted, the action of the respondent in terminating the agreements only on the ground of non-payment of earnest money deposit within the stipulated time, particularly without issuing any prior notice is arbitrary and illegal.

In the counter-affidavit filed by the respondent, it is stated that since the petitioner

failed to comply with the specific condition that the balance earnest money deposit of Rs.21,600/- and Rs.18,600/- shall be paid by 25-03-2005, the agreements in its favour were cancelled. It was also stated that the demand drafts sent by the petitioner have been received in the office of the respondent on 13-4-2005 i.e., after the cancellation of the agreements. Hence, the impugned orders of termination which are for non-compliance with tender conditions are in accordance with law and unassailable.

I have heard the learned Counsel for both the parties and perused the material on record.

Though under the conditions of the agreement the petitioner was required to pay the balance E.M.D. by 25-03-2005, it has been explained by the petitioner Company that since the operation and maintenance work under the subject contract needs personal attention, the proprietor of the petitioner Company was away from the headquarters and the demand drafts were purchased on 13-04-2005 and the same were submitted in the office of the respondent on 13-4-2005 itself. A copy of the covering letter placed before this Court shows that the receipt of the said demand drafts was acknowledged by the office of the respondent and the endorsement bears the date as 13-04-2005. Though the orders of termination appear to have been passed on 28-03-2005, as can be seen from the original envelopes placed before this Court, the said orders which were dispatched under Certificate of Posting were received by the petitioner only on 2-5-2005. In the circumstances, I find force in the submission of the learned Counsel for the petitioner that the impugned orders of termination were issued only after receiving the demand drafts submitted by the petitioner towards E.M.D. Even assuming that the impugned orders were passed in March, 2005 itself as pleaded by the respondent, it is ununderstandable why the respondent has not taken any steps to implement the same w.e.f. 31-3-2005 as mentioned in the said orders. Admittedly, the petitioner has been carrying on the work of supply of water under the contracts in question uninterruptedly even during the months of April and May. Thereafter, by virtue of the interim orders granted by this Court dated 28-6-2005, the petitioner has been continuously executing the works as per the terms of the contracts till today. It is also relevant to note that admittedly the period of contract is only upto 30-09-2005 and the same has almost

come to an end. In any event since the demand drafts furnished by the petitioner were accepted and retained by the respondent, the alleged ground of non-payment of the E.M.D. cannot be said to be existing.

Having regard to the facts and circumstances and particularly keeping in view that the petitioner has been operating the subject contracts and supplying drinking water to a number of villages, I am of the view that the interference of this Court at this point of time is not warranted.

Accordingly, the impugned orders are set aside and the Writ Petition is disposed of with a direction to the respondent to continue the petitioner without any interference, as per the terms and conditions of the two agreements in question. No costs.

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13th September, 2005.

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